

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 583 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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RANA KIKABA @ RANIBA HEMUJI KANAJI

Versus

DISTRICT MAGISTRATE

Appearance:

MR PR NANAVATI for Petitioner
MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 20/04/2000

ORAL JUDGEMENT

1. District Magistrate, Mehsana, passed an order on
August 25, 1999, in exercise of powers under Section 3(1)
of the Gujarat Prevention Anti-Social Activities Act,
1985 ("PASA Act" for short), detaining the
petitioner-Rana Kikaba @ Raniba Hemaji, under the

provisions of the said Act.

2. The grounds of detention indicate that the detaining authority took into consideration four offences registered against the detenu and statements of four anonymous witnesses. After considering the above material, the detaining authority came to a conclusion that the detenu is a bootlegger and that she is required to be immediately prevented from pursuing her illegal and anti-social activities. The detaining authority also considered the possibility of resorting to less drastic remedies and, ultimately, came to conclusion that the petitioner is required to be detained under the provisions of the PASA Act.

3. The petitioner challenges the order of detention on various grounds. However, learned advocate, Mr. P.R. Nanavati, appearing for the petitioner has restricted his argument to the ground of infringement of right of the detenu of making an effective representation and, thereby, rendering the continued detention illegal. According to him, the representation was sent to the detaining authority on behalf of the detenu. The said representation was considered by the detaining authority and a return communication was sent by the detaining authority dated December 14, 1999. It was contended, therefore, that the detaining authority, at that point of time, had become functus officio and could not have considered the representation. It is expected of the detaining authority to have forwarded the same to the Government, which the authority has failed to do. This can be said to have affected the right of the detenu of making an effective representation and, therefore, the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition.

5. Having regard to rival side contentions, it is clear from the communication (Annexure-C) dated December 14, 1999, sent by the detaining authority that he has considered the representation made on behalf of the detenu on 13th December, 1999. The representation is considered in detail and the detention is tried to be justified. In other orders, the representation came to be rejected. Mr. Dave, learned Assistant Government Pleader, after consulting the file, states that the detention order came to be approved by the Government on September 4, 1999. As such, on the date when the representation was considered, i.e. on 14th December, 1999, the detaining authority had become functus officio

and had no jurisdiction to consider and to grant or reject the representation. It was expected of the authority to have forwarded the same expeditiously to the Government for its consideration. The order passed by the detaining authority is subject to approval by the Government. Once that approval is given, the detaining authority becomes functus officio. The result is that the representation made on behalf of the detenu has not reached the authority which is competent to consider the representation. This can be said to have affected right of the detenu of making an effective representation envisaged under Article 22(5) of the Constitution. In this regard, decision of the Apex Court in the case of Navalshanker Ishwarlal Dave v. State of Gujarat, AIR 1994 SC 1496, Urmilaben Navnitlal Gandhi v. Commissioner of Police, Surat City & Ors., 1994 (2) GLH (UJ) 10 and Salim Pothiya Rehmanbhai Belia v. District Magistrate, Mehsana & Ors., 1994(2) GLH (UJ) 11 may be profitably referred to. In view of the above discussion, the petition deserves to be allowed.

6. In the result, the petition is allowed. The impugned order of detention dated August 25, 1999, passed against the detenu is hereby quashed. The detenu-Rana Kikaba @ Raniba Hemaji is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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